

No. 2575

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

GEORGE M. HEALY, as Trustee in Bankruptcy
of the Estate and effects of H. J. MARTIN,
Appellant,

vs.

W. H. WEHRUNG,

Appellee.

TRANSCRIPT OF RECORD.

Upon Appeal from the District Court of the
United States for the District of Oregon.

Filed

FEB 26 1915

F. D. Monckton,
Clerk.

No. _____

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

GEORGE M. HEALY, as Trustee in Bankruptcy
of the Estate and effects of H. J. MARTIN,
Appellant,

vs.

W. H. WEHRUNG,

Appellee.

TRANSCRIPT OF RECORD.

Upon Appeal from the District Court of the
United States for the District of Oregon.

INDEX OF PRINTED TRANSCRIPT OF
RECORD.

	Page
Answer	7
Appeal, Assignment of Errors on	11
Appeal, Citation on	1
Appeal, Order allowing	13
Appeal, Petition for	10
Assignment of Errors	11
Bill of Complaint	3
Certificate to Transcript	96
Citation on Appeal	1
Clerk's Certificate to Transcript	96
Complaint, Bill of	3
Decree, Final	9
Evidence, Transcript of	15
Evidence, Order settling	16

EXHIBITS

Plaintiff's Exhibit No. 1	53
Plaintiff's Exhibit No. 2	55
Plaintiff's Exhibit No. 3	57
Plaintiff's Exhibit No. 4	59
Plaintiff's Exhibit No. 5	94
Defendant's Exhibit B	71
Final Decree	9
Order Allowing Appeal	13

Index.	Page.
Order Settling Evidence.....	16
Petition for Appeal.....	10
Praecipe for Transcript.....	14
Stipulation as to Evidence.....	15
Transcript of Evidence.....	15
Transcript, Praecipe for.....	14
 TESTIMONY ON BEHALF OF PLAINTIFF:	
F. A. DOUTY	
Direct Examination.....	31
Cross Examination.....	41
 GEORGE M. HEALY	
Direct Examination.....	16
Cross Examination.....	24
Recalled.....	66
 H. J. MARTIN	
Direct Examination.....	61
Cross Examination.....	65
Re-direct Examination.....	66
 ALEX SWEEK	
Direct Examination.....	60
 W. H. WEHRUNG	
Direct Examination.....	42
 TESTIMONY ON BEHALF OF DEFENDANT:	
W. H. WEHRUNG	
Recalled for Direct Examination.....	69
Cross Examination.....	71

*In the United States Court of Appeals for the Ninth
Circuit.*

GEORGE M. HEALY, as Trustee,

Appellant,

vs.

W. H. WEHRUNG,

Appellee.

Names and Addresses of the Attorneys of Record.

BEACH, SIMON & NELSON, Board of Trade,
Portland, Oregon, for Appellant.

MANNING, SLATER and LEONARD, Fenton Build-
ing, Portland, Oregon, for Appellee.

In the District Court of the United States for the District of Oregon.

GEO. M. HEALY, as Trustee in Bankruptcy of the estate and effects of H. J. MARTIN,

Plaintiff,

v.

W. H. WEHRUNG,

Defendant.

CITATION ON APPEAL.

To W. H. Wehrung, defendant herein, and to Messrs. Manning, White & Hitch, his Counsel:

You are hereby cited and admonished to appear before the Circuit Court of Appeals of the 9th Judicial Circuit, at the City of San Francisco, in the State of California, on the 3rd day of January, 1915, pursuant to the order allowing the appeal filed and entered in the Clerk's Office of the District Court of the United States for the District of Oregon, from a final decree signed, filed and entered on the 11th day of June, 1914, in that certain suit, being in equity, No. 6147 wherein Geo. M. Healy is plaintiff, and you are defendant and appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing the appeal, is mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

WITNESS the Honorable R. S. Bean, United States District Judge for the District of Oregon, this 5th day of Dec., 1914.

R. S. BEAN,

U. S. District Judge for the District of Oregon.

State of Oregon,

County of Multnomah,—ss.

Due and timely service of the within Citation on appeal and the receipt of a duly certified copy all at the city of Portland, in said County and State, is hereby admitted.

JOHN MANNING,

Attorney for Defendant.

Filed December 5, 1914. G. H. Marsh, Clerk.

*In the District Court of the United States for the
District of Oregon.*

July Term 1913.

Be it Remembered, That on the 24th day of October, 1913, there was duly filed in the District Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit:

Bill of Complaint.

*In the District Court of the United States for the
District of Oregon.*

Complaint.

GEO. M. HEALY, as Trustee in Bankruptcy of the
estate and effects of H. J. MARTIN,

Plaintiff,

v.

W. H. WEHRUNG,

Defendant.

The complaint of Geo. M. Healy, of the City of Portland, County of Multnomah, State of Oregon, as Trustee in bankruptcy of the estate and effects of H. J. Martin, Bankrupt, against W. H. Wehrung, the above named defendant, and thereupon the plaintiff complains and says:

I.

That on the 25th day of March, 1913, a petition was filed in the District Court of the United States

for the District of Oregon, by the said H. J. Martin praying that he, the said H. J. Martin, be declared and adjudicated a bankrupt in accordance with the Acts of Congress of the United States, approved July 1, 1898, as amended, known as "The Bankruptcy Act of 1898."

II.

That on the same date, by the order of said Court, said H. J. Martin was duly adjudged a bankrupt.

III.

That thereafter on the 15th day of April, 1913, at the first meeting of the creditors held in said proceedings, pursuant to due notice, the complainant, Geo. M. Healy, was duly elected Trustee of the estate and effects of said bankrupt, and immediately thereafter qualified by filing the required bond which bond was duly approved and ordered filed by this Court, and was filed, and that said complainant has ever since been and now is acting as said Trustee.

IV.

That on the 25th day of September, 1913, complainant petitioned for an order of this Court authorizing and directing him to bring action against the said W. H. Wehrung, defendant herein, for the recovery of the moneys hereinafter referred to, and thereafter on the 13th day of October, 1913, an order

was entered authorizing and directing your complainant to bring this action.

V.

That your complainant as said Trustee, is entitled to all the property of said bankrupt, and is entitled to all the property which was conveyed or assigned, or transferred by said bankrupt contrary to the provisions of the Acts of Congress of the United States, approved July 1, 1898, as amended, known as the Bankruptcy Act of 1898, as amended, and that he, the said complainant, more particularly is entitled to all property transferred, conveyed, assigned or paid by the said bankrupt within four months of the filing of the petition in bankruptcy by him to any creditor, the effect whereof would create a preference in favor of said creditor, as defined in the said Bankruptcy Act, said creditor having reasonable cause to believe that such transfer, payment or assignment would effect a preference as so defined.

VI.

That on the 4th day of March, 1913, and within four months of the filing of the petition in bankruptcy by the said H. J. Martin, said H. J. Martin paid, transferred and assigned to W. H. Wehrung, defendant herein, the sum of Fourteen Hundred and Seventy-three and 20-100 (\$1473.20) Dollars, and that said sum was received by the said W. H. Wehrung, or on his behalf, and applied by him on alleged in-

debtedness of the said bankrupt to the defendant, and that on said date the said W. H. Wehrung, took notorious, exclusive and continuous possession of said sum of money, towit: Fourteen Hundred and seventy-three and 20-100 (\$1473.20) Dollars belonging to H. J. Martin, and that at the time of taking and receiving said money said H. J. Martin was insolvent, and the said W. H. Wehrung had reasonable cause to believe that the said transfer, payment and assignment of said money would effect a preference in his favor, as defined in said Bankruptcy Laws, and that the said transfer, payment and assignment of money to the said defendant did effect such preference.

VII.

That the said Trustee is entitled to the said sum of Fourteen Hundred and seventy-three and 20-100 (\$1473.20) Dollars paid to and taken by the Hillsboro National Bank, as aforesaid, with interest thereon at the rate of six per cent per annum from March 4, 1913.

WHEREFORE complainant prays for a judgment against W. H. Wehrung in the sum of Fourteen Hundred and seventy-three and 20-100 (\$1473.20) Dollars, with interest on said sum at the rate of 6% per annum from March 4, 1913, and for the costs and disbursements herein.

BEACH, SIMON & NELSON
Attorney for Trustee of the Estate
and effects of H. J. Martin.

UNITED STATES OF AMERICA,
State and District of Oregon,
County of Multnomah,—ss.

I, Geo. M. Healy, being first duly sworn, depose and say: I am the plaintiff in the above entitled action, whose name is signed to the foregoing complaint and that all the facts therein contained are true, as I verily believe.

GEO. M. HEALY

Subscribed and sworn to before me this 24 day of October, 1913.

(Notarial Seal)

N. D. SIMON

Notary Public for Oregon.

Filed Oct 24 1913. A. M. Cannon

Clerk U. S. District Court.

And afterwards, to wit, on the 17th day of November, 1913, there was duly filed in said Court and cause an Answer, in words and figures as follows, to wit:

Answer.

Comes now the above named defendant and for answer to plaintiff's complaint heretofore filed herein, admits, denies and alleges as follows:

I.

Admits paragraphs 1, 2, 3, and 4 of plaintiff's complaint.

II.

Denies each and every allegation, matter and thing set out and contained in paragraph 5 of plaintiff's complaint and the whole thereof.

III.

Admits that on the 4th day of March, 1913, and within four months of the filing of the petition in bankruptcy by the said H. J. Martin, said H. J. Martin paid, assigned and transferred to W. H. Wehrung, the defendant herein, the sum of Fourteen Hundred and Seventy-three and 20-100 (\$1473.20) Dollars, and that said sum was received by the said W. H. Wehrung and applied by him on an indebtedness of the said bankrupt, H. J. Martin, due the defendant W. H. Wehrung, and that the said W. H. Wehrung on said date took notorious, exclusive and continuous possession of said sum of money, to wit, Fourteen Hundred and seventy-three and 20-100 (\$1473.20) Dollars, but said defendant denies each and every other allegation, matter and thing set out and contained in said paragraph 6 of plaintiff's complaint and the whole thereof.

IV.

Denies each and every allegation, matter and thing set out and contained in paragraph 7 of plaintiff's complaint and the whole thereof.

WHEREFORE, defendant demands that he go

hence without day and that he recover of the plaintiff his costs and disbursements herein.

MANNING, WHITE & HITCH
Attorneys for Defendant.

State of Oregon,
County of Multnomah,—ss.

I, W. H. Wehrung being first duly sworn, depose and say that I am the Defendant in the above entitled action; and that the foregoing answer is true, as I verily believe.

(Sgd) W. H. WEHRUNG.

Subscribed and sworn to before me this 4th day of Nov., 1913.

(Notarial Seal) (Sgd) ROBERT E. HITCH
Notary Public for the State of Oregon.

Filed November 17, 1913. A. M. Cannon, Clerk.

And afterwards, to wit, on Tuesday, the 11th day of June, 1914, the same being the 80th Judicial day of the Regular March, term of said Court; Present: the Honorable Robert S. Bean United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Final Decree.

Now, at this day, come the plaintiff by Mr. Roscoe P. Nelson, of counsel, and the defendant by Mr.

John Manning and Mr. Samuel White, of counsel; whereupon, this cause comes on to be tried by the Court upon the pleadings and the proofs; and the Court having heard the evidence adduced, the arguments of counsel and now being fully advised in the premises, it is Ordered, Adjudged and Decreed that the bill of complaint herein be, and the same is hereby dismissed, and that said defendant do have and recover of and from said plaintiff his costs and disbursements herein taxed at \$

R. S. BEAN,
Judge.

And afterwards, to wit, on the 5th day of December, 1914, there was duly filed in said Court and cause, a Petition for Appeal, in words and figures as follows, to wit:

Petition for Appeal.

To the Honorable R. S. Bean, District Judge:

The above named plaintiff feeling aggrieved by the decree rendered and entered in the above entitled cause on the 11th day of June, 1914, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of error filed herewith, and he prays that his appeal be allowed, and that citation be issued as provided by law, and that a trans-

cript of the record proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals, for the Ninth Circuit under the rules of such court in such cases made and provided.

And your Petitioner further states that his appeal is in his capacity as Trustee in Bankruptcy, and prays therefore that no security be required of him on such appeal.

GEO. M. HEALY

Trustee in Bankruptcy of the estate and effects of H. J. Martin, Petitioner.

BEACH, SIMON & NELSON

Solicitors for Plaintiff.

Filed December 5, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 5th day of December, 1914, there was duly filed in said Court and cause, an Assignment of Errors, in words and figures as follows, to wit:

Assignment of Errors.

Now comes the Plaintiff in the above entitled cause and filed the following Assignment of Error upon which he will rely upon his prosecution in the appeal of the above entitled cause from the decree made by this Honorable Court on the 11th day of June, 1914.

First: That the United States District Court for the District of Oregon erred in failing to enter a decree herein in accordance with the prayer of the complaint and in dismissing the plaintiff's Bill of Complaint, the basis of this contention being that the testimony required a decree in favor of the plaintiff in that the evidence adduced demonstrated that defendant within four months prior to the adjudication in bankruptcy of H. J. Martin, received a preferential payment from said Bankrupt, and that said defendant had, at said time, reasonable cause to believe that the Bankrupt was insolvent and that the defendant would thereby and did receive a greater percentage than other creditors of the same class.

WHEREFORE, the appellant prays that said decree be reversed, and that said District Court for the District of Oregon, be ordered to enter a decree in favor of the appellant, as prayed for in the Bill of Complaint herein.

GEO. M. HEALY

Trustee in Bankruptcy of the estate and effects of H. J. Martin.

BEACH, SIMON & NELSON
Solicitors for Plaintiff.

Due and timely service of the within assignment of errors and the receipt of a duly certified copy is hereby admitted.

Portland, Oregon, Dec. 5, 1914.

JOHN MANNING
Attys for Defendant.

Filed December 5, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on Saturday, the 5th day of December, 1914, the same being the 30th Judicial day of the Regular November term of said Court; Present: the Honorable Robert S. Bean United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Allowing Appeal.

In the District Court of the United States for the District of Oregon.

GEO. M. HEALY, as Trustee in Bankruptcy of the estate and effects of H. J. Martin,

Plaintiff

v.

W. H. WEHRUNG,

Defendant

On motion of Roscoe C. Nelson, of counsel for complainant, it is hereby ordered that the appeal to the U. S. Circuit Court of Appeals for the Ninth Circuit, from the decree heretofore entered and filed herein be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the said Circuit Court of Appeals for the Ninth Circuit, and that no security on appeal be required.

R. S. BEAN

Judge.

Dated: Dec. 5, 1914.

Filed December 5, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 5th day of December, 1914, there was duly filed in said Court and cause, a Praecipe for Transcript in words and figures as follows, to wit:

Praecipe for Transcript.

In the District Court of the United States for the District of Oregon.

Praecipe of Appellant for Transcript.

GEO. M. HEALY, as Trustee in Bankruptcy of
the estate and effects of H. J. Martin,

Plaintiff

v.

W. H. WEHRUNG,

Defendant

To the Clerk of the above entitled Court:

Please issue certified Transcript of the Record in the above entitled suit to the U. S. Circuit Court of Appeals for the Ninth Circuit, said Transcript to consist of Bill of Complaint, Answer, Reply, Evidence hereto Attached, Appellant's Petition for Appeal, Order Allowing Appeal, Assignments of Error and Citation.

We request that the Transcript be prepared so as to comply with Rule 76 of Rules of Practise for the Courts of Equity of the United States.

Respectfully yours,

BEACH, SIMON & NELSON

Solicitors for Appellant.

Filed December 5, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 26th day of December, 1914, there was duly filed in said Court and cause, a Stipulation as to Transcript of evidence, in words and figures as follows, to wit:

Stipulation as to Transcript of Evidence.

In the District Court of the United States for the District of Oregon.

Stipulation.

GEORGE M. HEALY, as Trustee in Bankruptcy
of the Estate and effects of H. J. Martin,

Plaintiff

v.

W. H. WEHRUNG,

Defendant

It is hereby stipulated and agreed by and between the above named parties, by their respective solicitors of record herein, that the Abstract of Record on appeal in this cause may include the Transcript of Testimony as taken and filed herein, in lieu of a statement of evidence in narrative form, and that said Transcript may be taken on appeal as and for the Statement of Evidence prescribed by the rules of the Circuit Court of Appeal for the Ninth Circuit.

BEACH, SIMON & NELSON

Solicitors for Plaintiff

MANNING, SLATER & LEONARD

Solicitors for Defendant.

And afterwards, to wit, on Saturday, the 26th day of December, 1914, the same being the 48th Judicial day of the Regular November term of said Court; Present: the Honorable Robert S. Bean United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Settling Evidence.

Pursuant to stipulation between the parties, it is Ordered that the Transcript of Testimony taken and filed herein may be and the same is hereby made a part of the record on appeal, in lieu of a statement of the evidence in narrative form, and that said Transcript of Testimony may be considered as a Statement of the Evidence.

R. S. BEAN,
Judge.

Filed December 26, 1914, G. H. Marsh, Clerk.

And Afterwards, to wit, on the 28th day of December, 1914, there was duly filed in said Court and cause, the Evidence. in words and figures as follows, to wit:

Evidence.

Portland, Oregon, Thursday, June 11, 1914.

GEORGE M. HEALY,

Called on his own behalf as Trustee, being first duly sworn, testified as follows:

(Testimony of George M. Healy)

DIRECT EXAMINATION.

Questions by Mr. NELSON:

Mr. Healy, will you please state your occupation.

A. I am credit and office manager for Clarke-Woodward Drug Company.

Q. You held that same position in February and March, 1913?

A. I did.

Q. What connection, if any, have you with the bankruptcy of H. J. Martin? A. I am Trustee.

Q. And did you have any connection with Mr. Martin's business or affairs, or any relation to it before your appointment as Trustee?

A. Only in connection with his account at the time we were trying to collect it.

Q. What was the nature of his account to which you refer?

A. He owed us about seven thousand dollars.

Q. You refer to Woodard & Clarke, or the Clarke-Woodward Drug Company?

A. Clarke-Woodward Drug Company.

Q. How long had it been due?

A. It was—oh, it was overdue; it was probably a year-and-a half's purchases or more.

Q. Now, I will ask you what if any offer of settlement with creditors was made by Mr. Martin in February or March.

Mr. MANNING: We object to that, if the court

(Testimony of George M. Healy)

please, for the reason that the question simply asks what he had to do with Mr. Martin, which doesn't go to Wehrung, in any manner.

COURT: Not unless Mr. Wehrung had knowledge of it. You can put this testimony in.

Mr. NELSON: It is up to me to show insolvency at that time.

COURT: I understand that.

Q. You understand the question?

A. What is it please.

Q. (Read:) Now, I will ask you what if any offer of settlement with creditors was made by Mr. Martin, in February or March.

A. Yes, there was an offer made of 25%, the first one. My recollection is that they afterwards offered 20%.

Mr. MANNING: Will you please speak a little louder.

A. Twenty per-cent.

Q. I will ask you whether or not any meetings of creditors were held at this time with reference to this condition of Mr. Martin's business.

A. There was a meeting held in Mr. Sweek's office, a short time prior to the day he filed his petition in bankruptcy.

Q. How generally was that attended, do you recall?

A. There were a good many creditors there; about all that the rooms could hold conveniently. Probably fifty there.

(Testimony of George M. Healy)

Q. Now, will you please tell the court what was the nature of the assets of this bankrupt, of this estate of which you are the Trustee, at the time you took possession.

A. Well, do you refer to the appraisement?

Q. Yes, inventory also.

Mr. MANNING: You referred to assets.

Q. Inventory and appraisement.

COURT: The assets that came into your hands as Trustee.

A. The stock of the Rowe & Martin Drug Company and the stock of the Portland Post Card Company, post Cards. That was all.

Q. What was the inventory and appraised value of that stock?

Mr. MANNING: You have an inventory; you took one?

A. I have an inventory. We took an inventory, but I haven't it with me.

Mr. MANNING: Have you it with you?

A. No.

Mr. MANNING: I would like you to get it.

Mr. NELSON: I would say all of those papers are before this court, the files of this court. If counsel does not object, I would like for him to use any portion now, subject to putting in the papers themselves.

COURT: Have you the records here?

Mr. NELSON: All available in Mr. Murphy's office. I can get them.

(Testimony of George M. Healy)

COURT: Well, he can state.

Mr. NELSON: I will have them here for you.

A. The Rowe & Martin stock was appraised at \$11,236.00.

Q. The Portland Postal Card stock?

A. The Portland Post Card, \$7595.00.

Q. Have you the inventory values? Have you the inventory?

A. No, but I remember the Rowe & Martin Inventory to be \$18,000.00, a little over, and the Post Card about \$8,000.00.

Mr. MANNING: In addition to the \$18,000.?

Mr. NELSON: Yes.

A. Not in addition, no.

Mr. MANNING: What?

A. Oh, the post card separately?

Mr. MANNING: \$18,000 and \$8,000?

A. Yes that would be right.

Q. How about the fixtures?

A. That included the entire appraisement.

Q. That included fixtures? A. Yes.

Q. Stock and fixtures are both included?

A. Yes.

Q. I will ask you what was the general nature and condition of these stocks.

A. Well, the post card stock was pretty poor stock; there was a great deal that had been there since the Seattle Fair, and it was old stock. It was hard to sell. The drug stock was pretty well run down. He hadn't kept that up for a year or more.

(Testimony of George M. Healy)

Q. Now what method of liquidation of these assets was followed?

A. I kept the Rowe & Martin store open for a month as a going concern, and the Post Card Company probably two months, and concluded that the Rowe & Martin store had been losing right along about \$500.00 a month. The Post Card Company was just about breaking even.

Q. And what was done then with reference to selling?

A. We afterwards closed out the Rowe & Martin—packed up the Rowe & Martin stock and sent it to the warehouse. I couldn't find a buyer for it; and we sold the post card stock in bulk, the last sale, and got \$2900.00 for it.

Q. Previous to that you had sold though portions of it in bulk, realizing practically cost, hadn't you?

A. Yes, we had sold some.

Q. And what did you realize from the drug stock?

A. Well, that was sold in detail. After I got it in the warehouse there were probably 150 sales from it there.

Q. Sold that in parcels? A. Yes.

Q. Got more for that than you could in bulk?

A. Yes, I couldn't get an offer for it in bulk at all.

Q. What amount in all was realized from the assets of Mr. Martin's estate?

A. There was \$11,779, that is while I had it as

(Testimony of George M. Healy)

receiver and trustee, both. I was appointed receiver at the time he filed his petition in bankruptcy, temporarily.

Q. There were, I believe, a number of preferred claims which had to be paid in full? A. Yes.

Q. Do you know the amount of those?

A. No, I haven't—

Q. What was the net amount available for creditors, for distribution to creditors?

A. Well, there has been one dividend declared for five per cent, which took \$2882.00.

Q. What amount was left for distribution?

A. I will correct that please; one dividend 5% is \$2453; there is now in the bank \$2882.

Q. Sufficient to pay another dividend?

A. Another of about 5%.

Q. 5%. Are there any other of the assets undisposed of?

A. None. A few bad accounts of no value.

Q. Do you know how much was realized from the accounts?

A. No, I haven't that separately.

Q. Are those accounts included in the figures which you gave as to the postal card and drug store assets? A. They are included.

Q. Oh, they are included? A. Yes.

Q. It includes then stock, fixtures and accounts?

A. Fixtures and accounts.

Q. Mr. Healy, what amount of claims against the estate were proven in bankruptcy?

(Testimony of George M. Healy)

A. \$49534.00.

Q. Is that exclusive or inclusive of the preferred claims?

A. That includes.

Q. Preferred claims. Does that include the indebtedness to Mr. Wehrung, the Hillsboro Bank and Mrs. Wehrung? A. No.

Q. Do you know what indebtedness the schedules in bankruptcy show? A. Yes, I have that.

Q. You have the schedule with you?

A. I have the schedule here. \$69,742.00.

Q. That is the voluntary petition in bankruptcy filed by Mr. Martin? A. Yes.

Q. And who was Mr. Martin's attorney in the matter?

A. Alex Sweek.

Q. Did he act for him throughout the proceedings? A. Yes.

Q. Now, Mr. Healy, you were credit man for Woodward & Clarke Company, or Clarke-Woodward & Company. A. Clarke-Woodward, yes.

Q. I will ask you whether or not you knew anything of this property in Washington County, in this litigation?

A. I knew he owned that.

Q. And what was the first intimation you had that it had been disposed of? When did you first know?

A. I didn't know it until after he filed his peti-

(Testimony of George M. Healy)

tion in bankruptcy. After Mr. Martin filed his petition in bankruptcy, that he had sold it.

Q. Is the first that you knew of it? A. Yes.

CROSS EXAMINATION.

Questions by Mr. MANNING:

How long have you been with Woodward & Clarke Company? A. About 15 years, the two firms.

Q. Are you a druggist? A. No.

Q. Who took the inventory for you as receiver in this bankruptcy?

A. Men in our employ.

Q. Men in your employ?

A. Yes. Well, I will qualify that; some of Mr. Martin's men. There were two of Mr. Martin's men.

Q. You don't know anything about the drug business yourself? That is you don't know the value of these drugs, do you?

A. No.

Q. Or the character?

A. Yes, I would know by looking at the stock, the packages and the brands, those that are out-dated, unsalable.

Q. But you are not a druggist?

A. I am not a registered druggist, no.

Q. Now, did you try to collect the amount of money due Woodward & Clarke Company from Mr. Martin when it was a going concern?

(Testimony of George M. Healy)

A. The money due from Woodward & Clarke?

Q. No, due Woodward & Clarke from Martin & Company? A. Yes.

Q. When it was a going concern? A. Yes.

Q. And did you collect any money from them at all?

A. No, not in the last year or so before he filed his petition.

Q. What?

A. During the year before he filed his petition, the last year that we did business with Martin was on a cash basis.

Q. But on the old account due your firm from Rowe & Martin, did he pay you any money during the last year that he was a going concern?

A. I can't recollect that he did.

Q. You would know if you saw your books, would you? A. Yes.

Q. You don't know whether he paid you anything within the four months prior to filing his petition in bankruptcy, did he?

A. Not on his old account; he owed us an old note, \$5190; he never paid anything on that.

Q. He never paid anything on that; did he pay you anything on the account, on the open account?

A. No, only we would let him have goods today, and tomorrow he would send his check, although we kept that on the ledger account.

Q. I see, but as a matter of fact he did pay your

(Testimony of George M. Healy)

firm considerable money before he went into bankruptcy and within four months, did he not?

A. Yes, for goods sold on a cash basis.

Q. You say you would send goods over today and he would send you check tomorrow?

A. That was the arrangement.

Q. Thirty days would be cash also according to customary way of doing business? A. What say?

Q. Thirty days would be cash according to the customary way of doing business.

A. Not in this particular case, because we thought Mr. Martin was owing us too much then.

Q. Do you know Mr. Wehrung? A. No.

Q. You say there was a meeting of the creditors of Martin & Rowe, Rowe & Martin rather is the firm. Where did they hold their meeting?

A. In Mr. Sweek's office.

Q. How long before he went into bankruptcy?

A. I think that must have been a week; a few days before anyway.

Q. Did your firm threaten to put him into bankruptcy if he didn't pay what he owed you?

A. Not that I know of.

Q. You did the business for the firm, did you not?

A. Not that; Mr. Murphy, the attorney, had it for several months.

Q. Who?

A. Mr. Murphy. Chester Murphy was our attor-

(Testimony of George M. Healy)

ney in the matter several months prior to the time he filed his petition in bankruptcy.

Q. Now, you say you held a note against this concern for five thousand dollars? A. Yes.

Q. Signed by whom? A. Rowe & Martin.

Q. Who signed it?

A. Mr. Martin.

Q. Signed Rowe & Martin by Mr. Martin?

A. Yes, sir.

Q. Wasn't it Rowe & Martin by Rowe?

A. Oh, no. It wasn't Rowe. Rowe had no connection with it when we got that note.

Q. Oh, Rowe was out of the business?

A. Yes.

Q. Did you ever ask Mr. Martin for a statement of his assets prior to his bankruptcy?

A. No, but I think Mr. Murphy did, and Mr. Clarke did.

Q. Do you know whether he got it?

A. I think so.

Q. Do you know what it is?

A. Yes, I have a recollection of seeing the statement.

Q. Did it show the assets to be \$49,554, as you have sworn to? A. The assets?

Q. Yes. A. No, I can't state that.

Q. Do you know how much it did? A. No.

Q. Would you kindly have that - - -

A. I think Mr. Murphy has that in his possession.

Q. Would you get it?

(Testimony of George M. Healy)

A. Yes, I will get it if he has it.

Q. Now, it was Mr. Murphy then that tried to collect this money from Martin when it was a going concern, and not you?

Q. Mr. Martin—yes, Mr. Murphy.

Q. What is the customary valuation of a stock like Rowe & Martin drug firm when they go into bankruptcy, taking an inventory? How do you take the inventory.

Q. Well, we took it at what it cost.

Q. Cost price? A. Yes.

Q. Taking it from Mr. Martin's bills?

A. Yes.

Q. And you are prepared to say that aggregated \$49,550?

COURT: No, that is the claims.

Q. Oh, those were the claims; \$18,000 for the drug account? A. That is it.

Q. And \$8,000 for the postal cards.

A. I can only testify as to the drugs, the drug stock.

Q. What was that?

A. The cost value. It was about \$18,000.

Q. You remember when you first considered that Martin & Rowe, or H. J. Martin was insolvent?

A. Well, Mr. Martin submitted several statements, and of course showed himself as solvent but it was my opinion, personal opinion, that he was not from the way he was running his business and the location that he had.

(Testimony of George M. Healy)

Q. Do you remember—can you remember any particular month, just prior to his going into bankruptcy, that he supplied you with a statement, showing that he was perfectly solvent?

A. No. It was within three months I guess; two or three months.

Q. It was within three months. Did you sell him any goods at all on time? Did you extend him any credit after you began trying to collect your claim of him?

A. No, only on cash basis. The arrangement we had with him was to pay as soon as he got his invoices.

Q. What?

A. The arrangement we had was that he should pay as soon as he got his invoices.

Q. Who did you sell these goods to?

A. How do you mean?

Q. The goods that you sold?

A. What do you mean, to Rowe & Martin or H. J. Martin?

Q. H. J. Martin?

A. Billed to Rowe & Martin

Q. I don't mean that. The goods now, the bankruptcy goods as trustee.

A. Oh, they were sold to the retail druggists here.

Q. Did you make the sales yourself?

A. No, I had a clerk.

Q. Who made those sales?

(Testimony of George M. Healy)

A. I had a man by the name of Pritchard, and another by the name of Prowell.

Q. Pritchard and who? A. Prowell.

Q. You don't know anything about the sale of the goods then at all, yourself, do you? The sale of the bankrupt stock?

A. Only that I checked them up every day.

Q. I know.

A. I didn't make any—I didn't sell the goods.

Q. To these men here in town?

A. I think so.

Q. You never had any conversation with Mr. Wehrung about his claim at all? A. No.

Q. Was his claim ever listed in any statement that you got from Mr. Martin?

A. I don't think so. I don't know. Mr. Martin always listed—he listed the property as an asset, though.

Q. He listed the land, you say? A. Yes.

Q. Have you got that statement he made? Murphy has it you say? A. Yes.

Q. Did he list his home up on 24th?

A. I think he included that, yes, sir.

Q. That is all you know about this case, is it?

A. Yes.

Witness excused.

Mr. NELSON: Now, if the court please, I ask that Mr. Healy go to Mr. Murphy's office and get those papers.

COURT: Very well.

(Testimony of F. A. Douty)

F. A. DOUTY

A witness called on behalf of the trustee being first duly sworn testified as follows:

DIRECT EXAMINATION.

Questions by Mr. NELSON:

Mr. Douty, what is your place of residence?

A. Portland?

Q. And your business?

A. I am in the lumber and logging business.

Q. And was your place of business and residence the same in February and March, 1903?

A. Yes. I have been here about twelve years in Portland.

Q. Mr. Douty, in February of 1913, were you well acquainted with property and property values in Washington County, Oregon.

A. No, I can't say that I was at that time.

Q. Had you invested or did you contemplate investing at that time in Washington County?

A. Well, I think along about the first of March, the first part of March, I did; probably it was the latter part—I think probably the latter part of February I started negotiations.

Q. Will you kindly explain in what manner you came to go into the investment in Washington County?

A. Along in the latter part of February, Mr. Wehrung told me that he had a good investment; knew where there was a good investment in Washington County up near Beaverton, and wanted to

(Testimony of F. A. Douty)

know if I knew of anybody that wanted to buy any acreage. I asked him some questions about it and he told me about the acreage that was there, and I asked him what the value of it was, and he said "Well, it could be bought for \$150.00 an acre," but he thought it was a good buy at that price. Well, I told him I might take it myself if it was a good buy, and he suggested I go up and look at it, which I did a little later than that, went up and looked at it, and there were some people that had the adjoining property, that were living there; got their ideas of value of it, and came to the conclusion that it was a good buy at the price.

Q. Isn't it a fact that property in the neighborhood was held at three or four hundred dollars an acre?

A. Well, the property adjoining on each side was improved; quite a lot of it is under cultivation and has good dwellings on it, good buildings, farm buildings. And one party told me that the property was worth from three to five hundred dollars an acre, he said, owing to the location around there; and the other party was about—said about \$250.00 to \$400.00; but this acreage that I bought, it is covered with brush. That is, it is in its raw state; it has never been cultivated. It isn't even fenced, and of course I figured it would cost probably \$100.00 an acre to clear it up.

Q. Did you know Mr. Martin at this time?

A. No.

(Testimony of F. A. Douty)

Q. Did you know that Mr. Martin owned that property at this time?

A. I knew—yes, I knew he owned it. Mr. Wehrung told me it was Mr. Martin's land.

Q. Well, what if any statement did Mr. Wehrung make to you as the reason why you could buy the land cheap at that time?

A. Well, he said that there was a damage suit pending in the courts that they were expecting a decision on within a short time, and it was positive it was going against Mr. Martin, and it would be quite a sum, and it was necessary for him to raise funds to meet it.

Q. Did Mr. Wehrung tell you that Mr. Martin was in pretty bad shape?

A. No, I don't think he said anything further than that. That was all he said.

Mr. NELSON: If the court please, I ask the privilege of refreshing this witness' memory from testimony given by him at the bankruptcy hearing.

Q. Mr. Douty, if I understood you—I want to state this is testimony you gave before the Referee in Bankruptcy. Look at this answer to refresh your memory and then answer my question again.

A. Yes, that is just about what he told me, as I remember it, yes.

Q. Did he or did he not tell you that Mr. Martin was in bad shape?

A. I don't know that he referred to his business or went into detail about it. He said he was in bad

(Testimony of F. A. Douty)

shape; he had a judgment that would probably go against him and he had to pay it, or something to that effect.

Q. Now, I will ask you to also look at page 10 of your testimony. I will now ask you whether or not Mr. Wehrung told you at that time that Mr. Martin was badly in need of money.

A. Yes, that is the way I understood it. He would need this fund; need all the money he could get.

Q. Did Mr. Wehrung or Mr. Martin accompany you when you went to look at this property?

A. No, they did not, either one of them. I never saw Mr. Martin until, I think, the day before I bought the land.

Q. Who showed you the property?

A. Well, one of our employes, our city solicitors, went up with me; that is, I asked him to go along. Went up on the electric line to Beaverton, got off there, and made inquiry at Beaverton where it was located. I knew it was located about a mile-and-a-half east of Beaverton, but I got a description there of the direction, and we went out and looked at it. Wasn't any one went along.

Q. Did any one point out to you the boundary of the property?

A. No, the people living there told me the property in between the two fences was the Martin land.

(Testimony of F. A. Douty)

Q. You bought it on the strength of that examination and investigation?

A. Yes, I bought it on that and on the abstract, of course. On Mr. Wehrung's recommendation that it was all right.

Q. When you came back did you report to Mr. Wehrung you were ready to buy it?

A. No, I don't remember I said anything to him. He called me up in the course of three or four days after that and asked me if I had been out. I told him I had, and he wanted to know what I thought of it. I told him I thought from the information I could get it was a good investment and if the title was all right, I would take it.

Q. Did you make an appointment to meet him then for the purpose of closing it?

A. Well, I told him to have everything prepared for the closing of the deal and let me know when it was ready, which he did.

Q. Where did you meet?

A. Met down in the Lumbermens Building.

Q. In the Lumbermens National Bank Building?

A. Yes, in the Lumbermens National Bank Building.

Q. In what suite of offices did you meet?

A. I think in the main office there. I don't know whether Mr. Davis' office. I never was in there before. I don't know whose office it was.

Q. Do you know whether or not it was the suite

(Testimony of F. A. Douty)

of offices maintained by W. M. Davis and Mr. Alex. Sweek?

A. I didn't get the question.

Q. Do you know whether or not it was the suite of offices maintained by Mr. Davis and Mr. Sweek?

A. Yes, I think all offices of the same suite.

Q. With whom did you do your talking when you closed the transatcion. Mr. Martin, Mr. Wehrung, or who?

A. When I arrived at the office, Mr. Martin was there and Mr. Wehrung, and I think Mr. Davis, and Mr. Wehrung intruded me to Mr. Martin. This was the first time I met Mr. Martin, and I told him that Wehrung had been talking to me about selling this land, that he wanted to sell this land, and said to him, probably, what Mr. Wehrung had told me. So I said whenever the deed was ready, I would take the property, and the understanding was I wasn't to pay any commision on it, no sale commision.

Q. Was the matter closed that day, or when?

A. No, it was closed the next day.

Q. Who were present the next day?

A. I don't remember now. I think Mr. Wehrung was there and I think Mr. Martin was there, and Mr. Davis, I think. All three of them.

Q. To whom did you give your check?

A. Well, when they gave me the deed, I laid the check on the desk; on a table it was if I remember. I don't know who took the check.

(Testimony of F. A. Douty)

Q. You don't know who took the check?

A. No, I took my deed and left.

Q. What was the amount of the check?

A. It was \$5875.00.

Q. Have you that check?

A. Well, I have—whoever got the check took it down to the bank and got it certified, and the bank don't give up the original checks in a case of that kind. They simply give me—return a regular bank charging check. I have that. Of course the original check is at the bank.

Q. You don't know who cashed the check?

A. No, I don't know. I never have seen the check since I gave it. (Producing bank charge).

Q. Do you know the date? This bears no date. Do you know what date it was?

A. Well, it was either March 4th or 5th. I am not positive about that.

Q. The first week in March, anyway?

A. Yes.

Q. Fourth or fifth of March?

A. Yes, first of March.

Q. What lawyer represented you in the transaction or the purchase?

A. I didn't have any attorney.

Q. You had no attorney at all. Was the deed there all ready for you and signed that day?

A. Well, I think I went up there twice. The first time I went, they said it wasn't ready, but when I went back the second day—no the same day—the deed was ready.

(Testimony of F. A. Douty)

Q. Had Mrs. Martin signed it and acknowledge it?

A. Yes, when I went back the second time, the deed was all ready.

Q. Did you get an abstract of title?

A. Yes, I had an opinion; I got an opinion at that time for it and I got the abstract.

Q. When did you get the abstract?

A. I got an opinion probably four or five days before I closed the deal; I got the abstract, I think, the day before.

Q. You got the abstract the day before it was closed? A. Yes.

Q. And who gave you this opinion?

A. Mr. Wehrung gave me the opinion.

Q. Mr. Wehrung gave you the opinion?

A. Yes, that is he had some attorney in Hillsboro look it up.

Q. He had his attorney in Hillsboro look it up?

A. Yes.

Q. Did you pay for that or he?

A. No, I didn't pay for it.

Q. And you bought the property on that statement?

A. Well, I got the abstract; bought it on—I suppose the opinion was—certified that the abstract was correct, and I bought it on that recommendation.

Q. Now, Mr. Douty, aren't you mistaken about that? Isn't it a fact that you didn't have the abstract as late as May when you testified in the bank-

(Testimony of F. A. Douty)

ruptcy proceeding, you had never had an abstract? Isn't that correct?

A. No, I gave the abstract in the bankruptcy court at that time.

Q. At the time you testified?

A. That is a day or two afterwards they asked me to bring it in, and - - -

Q. Is it there still?

A. No, I have it with me.

Q. You have it with you?

A. Yes, I have a letter from you people when you sent it back to the office.

Q. Will you let me see that please?

A. The latter?

Q. Let me see the abstract. (Witness produces.) Is this the opinion to which you referred, this letter of Mr. Bagley's addressed to Mr. Wehrung?

A. Yes.

Q. This is also undated.

A. I hadn't noticed it wasn't dated. There is no date on it.

Q. Mr. Douty, this is a letter addressed to Mr. Wehrung by Mr. Bagley. You are aware of the fact that that constituted no security to you are you not, as a guaranty to you?

Mr. MANNING: If the court please, I think I ought to object to that.

Mr. NELSON: I am showing the way this transaction was carried on, a hurry-up sale, without an abstract, and that opinion, etc.

(Testimony of F. A. Douty)

COURT: It doesn't make any difference if Douty bought it without any examination at all.

Mr. MANNING: Hasn't alleged fraud.

COURT: Mr. Douty's knowledge of this is of no concern at the time he made the sale.

Q. Now, Mr. Douty, I will ask you to look at the certificate of title, which seems to be dated May 26, 1914.

A. Well, I sent that up there just recently and had it brought up to date. I paid the mortgage off the property. There was a mortgage on it. I took up the mortgage, and taken up this as soon as I took it up. I have been trying to sell the property and I wanted to keep it right up to date all the time.

Q. There was a mortgage of, I believe, a thousand dollars on the property, was there not?

A. Yes, there was.

Q. Mr. Douty, did Mr. Wehrung tell you at any time during the negotiations that the money was to go to him, the proceeds?

A. I don't recall that he did. I don't think he told me anything.

Q. Did you see any notes cancelled at the time the transfer was consumated? A. I didn't.

Q. You didn't see what became of your check at the time? A. I did not.

Mr. MANNING: Did you make a demand on us for these cancelled notes one time?

Mr. NELSON: Several times.

(Testimony of F. A. Douty)

Mr. MANNING: Here they are; do you want to see them?

Q. Mr. Douty, you paid \$150.00 an acre for the property, as I understand?

A. Yes, sir.

Q. And there was 46½ acres?

A. 46.57 I think was the correct measurement.

Q. Did you figure that out, \$5875.00?

A. No, that is what the abstract called for.

Q. Excuse me, did you figure that out as amounting to \$5875?

A. Well, I deducted from the total amount the mortgage and the delinquent interest and the taxes.

Q. And \$5875.00 was the balance?

A. Yes, after deducting the accrued interest and the taxes, it amounted to \$5875.00.

Q. That is the way those figures were arrived at?

A. Yes.

Q. You had no attorney, as I understand, to examine the abstract of title? A. No, I did not.

CROSS EXAMINATION.

Questions by Mr. MANNING:

Mr Douty, to whom did you make that check payable, do you remember?

A. Made it payable to Mr. Martin. I think his initials are H. J.

Q. And I understand you to say that this—you were in possession of this instrument that you call an opinion prior to the date the deed was made?

(Testimony of F. A. Douty)

A. Yes, Mr. Wehrung gave me that opinion before I closed the deal.

Q. Did you read it? A. Yes.

Mr. MANNING: This is purporting to have examined the abstract, your Honor; it is made by Bagley at Hillsboro.

Q. That is all you know about this transaction, is it?

A. Yes, sir.

Q. Something was said to you about the value of the land. You said if I understood you that—he informed you that there were certain pieces of property which were well improved and which sold for an amount you specified, but that this land you bought was all unimproved, wasn't even fenced, is that right?

A. Yes, the property that adjoins this has orchards on, good buildings, well fenced and under cultivation.

Q. What do you consider this land worth per acre now?

A. Well, I put a price recently on it of \$175.00; I did ask \$200.00 for it. I haven't been able to dispose of it.

Witness excused.

W. H. WEHRUNG

a witness called on behalf of the Trustee, being first duly sworn testified as follows:

(Testimony of W. H. Wehrung)

DIRECT EXAMINATION.

Questions by Mr. NELSON:

You are the defendant in this case?

A. You will have to talk a little loud to me this morning. I have such a cold I can hardly hear.

Q. Mr. Wehrung, you have had business transactions with Mr. Martin, Rowe & Martin, covering a number of years, have you not? A. Yes, sir.

Q. Do you know when they began, the financial transactions began? A. With me?

Q. Yes. A. I think it was in 1908 if I remember rightly. May have been 1907 and may have been 1909. I am not so sure about the year.

Mr. MANNING: You may have those cancelled notes, Mr. Wehrung, if it will assist you in any way. (Handing notes.)

A. 1909.

Q. Mr. Wehrung, that indebtedness then continued through renewals, and extensions, etc., for a number of years, did it not?

A. Well, the first—I kept on making loans from time to time.

Q. And do you know when you last advanced actual money to them?

A. No, I can't recall just when I last advanced money to them.

Q. Could you tell by looking at the notes you hold?

A. Well, the money—I secured loans for them

(Testimony of W. H. Wehrung)

after this, after these notes, but I don't recall those dates.

Q. You secured for whom?

A. I secured from Kuratli Brothers at Hillsboro.

Q. Well, I am talking of your personal loans now.

A. Well, these speak for all the loans.

Q. But they don't say when the money was advanced. They may have been renewal notes, may they not?

A. No, these all were the—they have never been renewed except the note to the Hillsboro National Bank. That is the only renewal.

Q. Speaking of the note to yourself, did you give us the date on which you advanced the money which that represents?

A. Well, lets see. One was dated January 1, 1909—well, wait a moment; that was to my father, January 1, 1909. Well, here is one to me. I was looking to see if I see the assignment. On May 14, 1909. I thought here was another note but I don't see it. I think there is another note.

Q. You think there was another note. What was the amount of the other note, do you know?

A. Well, the two notes together amount to something like \$1400.00 that was paid at that time.

Q. The notes payable to you personally?

A. The amount that was paid off here amounted to \$1400.00.

Q. Payable to you personally?

(Testimony of W. H. Wehrung)

A. Payable to me personally, yes.

Q. The other notes you speak of running to the Hillsboro National Bank and Mrs. M. C. Wehrung?

A. Yes.

Q. You collected interest on them? A. Yes.

Q. And disbursed it among those entitled to it?

A. Yes.

Q. The dealings of the bank and your mother were all through you? A. All through me, yes, sir.

Q. Are you an officer of the bank? A. Yes, sir.

Q. President, are you not?

A. President of the bank.

Q. Now do you recall, Mr. Wehrung, in the year 1911, agreeing in conjunction with Mr. Sweek and the United States National Bank to postpone the payment of your claims against Martin and this postal card business until the other creditors had been paid?

A. Well, as I said before when I was examined on this matter, there was some kind of agreement, but I don't recall just what it was.

Q. Wasn't it of that general nature?

A. My understanding was that we were to let us drift along until he had taken care of some of these eastern claims. I don't think I ever saw any agreement; I don't think I ever did. I don't recall it now.

Q. You were more closely in touch with Mr. Rowe than with Mr. Martin, were you not?

(Testimony of W. H. Wehrung)

A. Up to the time Mr. Rowe left.

Q. And after that you saw Mr. Martin?

A. Yes, sir.

Q. You knew the disastrous results of their Seattle venture, did you not?

A. I can't say I did know.

Q. You didn't? A. No.

Q. You didn't know that was a disastrous failure?

A. No, I did not. I knew nothing of the inside of the business.

Q. I will ask you to look at your testimony before the Referee. You were asked this question: "You knew as a fact, didn't you, Mr. Wehrung, that it was a terrible failure" referring to the Seattle business, "and that they suffered great loss"?

A. I understand they suffered a loss over there, but I didn't know the extent of it. I don't know now.

Q. You don't? A. No.

Q. You mean the bank didn't know the extent of their loss?

A. No, sir, I didn't. Of course in a general way understood they lost some money, but I never was on the inside of it.

Q. Did they make any curtailments of your indebtedness between May, 1909, or whenever the amount was loaned, and the date on which your note was paid?

A. Yes, they paid off one note of \$1800.00; paid

(Testimony of W. H. Wehrung)

off a note of either eleven or twelve hundred dollars. I have just forgotten now.

Q. When was the last curtail made, or payment made?

A. Well, I can't—the last payment was made on these notes here.

Q. When?

A. I would have to look and see. Well, the interest was paid on the one note here, due May 23rd. The interest was kept paid up to July 30, 1912, and paid again March 4, 1913.

Q. That was the date on which you got payment of the principal?

A. Yes. Well, these were all paid the same date. All this interest was paid up on my notes and my mother's up to that time.

Q. July? A. July 30, 1912, and then——

Q. Well, I am speaking of curtailing the principal, though.

A. Well, the principal was all reduced on these notes; the payments made was applied on the other notes taken up, as I spoke of a few minutes ago.

Q. For the original amounts.

A. For the original amounts.

Q. They have never been curtailed?

A. Except the \$1700.00 note was renewed for ninety days.

Q. How was the interest payable on these notes?

A. Well, it was payable annually.

Q. Is that the way the notes read on the face?

(Testimony of W. H. Wehrung)

A. I think so. Yes, that is the way.

Q. Does that note read that way?

A. At the rate of 8%. 8% per annum, doesn't it?

Q. Well, interest at the rate of 8% per annum; does that mean interest payable annually when you say 8% per annum?

A. Certainly. Of course that is a demand note; could collect the interest any time you pleased; could collect the note any time you pleased.

Q. Well, in your answer to that, you didn't mean to say that there was a provision that interest should be paid annually?

A. No, I mean to be understood like this: I understand any note draws interest so much per annum.

Q. How about this ninety-day note? How was interest paid on that?

A. It was payable at the end of the ninety days. It was due in ninety days.

Q. Was it paid at the end of ninety days?

A. It was always renewed at the end of ninety days.

Q. Was the interest always paid?

A. Always paid, yes, sir.

Q. Now, Mr. Wehrung, you received from Mr. Martin, or from Mr. Douty who just testified, \$5875.00 on March 4th or 5th, 1913, did you not?

A. Yes, sir.

Q. And what application did you make of that?

A. I have a memorandum here. I don't have

(Testimony of W. H. Wehrung)

the notes in my possession. I paid the Hillsboro National Bank \$1718.50; Mrs. M. C. Wehrung, \$2683.30; myself \$1473.20, making a total of \$5875.00.

Q. That cleaned up all the notes held by yourself, Mrs. M. C. Wehrung and the bank?—

A. Yes, sir.

Q. That you were interested in? A. Yes, sir.

Q. What did you do with the notes?

A. I turned them over to Mr. Martin.

Q. What did Mr. Martin do with them?

A. Well, he called for Mr. Sweek, had him come out and handed the notes to him.

Q. Was Mr. Sweek interested in any of the notes so far as their face or back was concerned?

A. Mr. Sweek endorsed on the \$1700.00 note.

Q. Is that note there? A. Yes, sir.

Q. And these notes Mr. Martin handed to Mr. Sweek at that time? A. Yes, sir.

Q. You didn't file any claim in bankruptcy on behalf of yourself or Mrs. Wehrung or the bank, and none of these parties filed claims in bankruptcy?

A. No, I did not.

Q. The indebtedness was entirely cancelled?

A. Yes, sir.

Q. Now, did these amounts which you paid the bank and Mrs. M. C. Wehrung and yourself cover exactly what was due you at the time, no more and no less?

A. Well, a very few cents difference. I don't

(Testimony of W. H. Wehrung)

remember just what that was now but there was a very few cents difference.

Q. Was there a dollar's difference or a hundred dollars?

A. I don't think there was. I don't recall the amount; seems to me 35 cents, something like that. It was very close.

Q. About thirty-five cents?

A. I think so. I won't be sure about that; they will show, of course; the notes will show.

Q. Did you fix the price of the property to suit the amount of the indebtedness?

A. No, sir, I did not.

Q. You didn't fix the amount of the indebtedness to suit the price of the property? A. No, sir.

Q. It was just a coincidence that that \$5875.00 which Douty paid exactly equalled the principal and accrued interest on these notes.

A. Yes, and if he had owed me a thousand dollars more, I would have taken his note for it.

Q. But he didn't? A. He didn't, no.

Q. You wouldn't have given him any difference?

A. What is that?

Q. You wouldn't have made him a present of any difference?

A. No, I am not going out and making presents.

Q. You are in the banking business and try to collect the money due you?

A. I try to; fail sometimes.

(Testimony of W. H. Wehrung)

Q. At that time that is what you intended to do, and did do?

A. Certainly.

Q. Will you give me the principal of those notes which you have, and which are the notes you cancelled? A. \$1700.00.

Q. \$1700.00? A. Yes.

Q. And payable to whom?

A. Payable to the Hillsboro National Bank. \$1500.00; that is payable to M. C. Wehrung, and a thousand dollars is payable to M. C. Wehrung, and \$1000.00 is payable to myself.

Q. Then you think another note is missing?

A. Yes, I know it is, because a credit of \$250.00 on this note; a credit of \$550.00.

Q. What did you say?

A. Just a moment here—more than that. Yes, there is another note missing, because here is a number of credits on this note of principal; on this note there was only \$37.30 of principal back.

Q. How much?

A. \$371.30, so there is another note that was paid at that time.

Q. You don't recall the amount of that note?

A. Well, it must have been a thousand dollars, because that and the accrued interest just about make the \$1473.00.

Q. Do you remember whether or not the note was \$1000.00.

A. Am pretty sure it was, but can't say it now.

(Testimony of W. H. Wehrung)

Q. Have you any memorandum of that?

A. No, I don't keep any memorandum of my own notes, never have.

Q. You can't recall at this time how much he owed you personally, or what notes you held?

A. That is what it was at that time.

Q. That was a thousand dollars?

A. That was the whole total of these notes paid me, two notes. The amount of the two notes I received the money for myself, however, was \$1473.20. One of these notes was \$371.30 principal; they cancelled that note, so the other note, you see, must have been around a thousand dollars.

Q. Yes, but I would like very much to know the amount of the note. A. I have no record of it.

Q. And you have no recollection.

A. No, I can't—I couldn't recollect those notes, until I had them before me.

Q. Had there been any curtail on the other note?

A. No, if on a thousand dollar note there couldn't have been very much; of course if it happened to have been a \$1500.00 note, why there would have been.

Q. Have you ever seen that note since that day?

A. Have never seen any of the notes since then.

Q. Where did you get them?

A. You saw Mr. Sweek give to Mr. Manning now.

Q. Mr. Sweek gave them to Mr. Manning. The

(Testimony of W. H. Wehrung)

last you saw of the notes was when you gave them to Martin, and he handed them to Sweek?

A. Yes, sir; that is the last I have seen of those notes.

Mr. NELSON: If the court please, I would like to ask counsel at this time to produce that other note, if they can find it from the same source they got these.

COURT: If they can, but Mr. Wehrung says these notes have not been in his possession until his counsel produced them.

Mr. NELSON: I don't call him to account for it, but I would like to ask him to produce them if he has them.

Mr. MANNING: You can ask Mr. Sweek.

Mr. NELSON: If the court please, I would like to file these notes as separate exhibits.

Notes Marked Trustees Exhibits 1, 2, 3 and 4.

Witness excused.

Mr. NELSON: Have you any other note, Mr. Sweek?

Mr. Sweek: No, I have not. It may be in the files.

TRUSTEE EXHIBIT 1.

\$1000.00

Portland, Oregon, May 14, 1909.

On demand, after date, without grace, we promise to pay to the order of W. H. Wehrung, Portland, Oregon, One thousand Dollars, in Gold Coin of the United States of America, of the present standard

(Testimony of W. H. Wehrung)

EXHIBIT 1—Continued.

value, with interest thereon in like Gold Coin at the rate of eight per cent. per annum from date until paid, for value received. Interest to be paid at maturity, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof, we promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable for Attorney's fees to be allowed in said suit or action.

ROWE & MARTIN

No. _____

By E. W. Rowe

Endorsements)

Nov. 15-09 Int. \$40.00

March 1-1910 Int. 23.34

April 10-1910 Rec. 8.60

From note dated Mr. 15, 1908 over payments. Tral-
tin(?) credits

June 1, 1910 \$11.40

Oct. 19-1910 Rec per TralTin? \$250.00

" 19-1910 " " " int. 52.50

Jan. 19-11 Rec per TralTin(?) 300.00

May 15-11 Rec. interest to date \$13.29

June 15-11 " " " " 2.95

July 15-11 " " " " 2.95

(Testimony of *W. H. Wehrung*)

EXHIBIT 1—Continued.

Aug.	15-11	Rec. Interest to Date	2.95
Sept.	15-11	“ “ “ “	2.95
Oct.	15-11	“ “ “ “	2.95
Nov.	15-10	“ “ “ “	2.95
“	15-10	on Principal <i>W. H. W. bill</i>	56.85
<hr/>			
“	4-11	balance due on principal	\$371.05
Dec.	15-11	Int.	2.60
Jan	15-12	“	2.60
Feb.	15-12	“	2.60
June	8-12	“ to Mar. 15-12	2.60
July	30-12	“ “ April 15-12	2.60
Mar.	4-13	“ “ date	28.60*
“	“ “	“ “ on principal	371.30
“	4-13	“ “ interest	28.60*

Int. is credited on this note twice.

TRUSTEE EXHIBIT 2.

\$1000.00 Portland, Oregon, May 23, 1909

On demand, after date, without grace, we promised to pay to the order of *W. H. Wehrung* Portland, Oregon One Thousand Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin at the rate of eight per cent. per annum from date until paid, for value received. Interest to be paid at maturity and if not so paid, the whole sum of both principal and interest to become immediately due

(Testimony of W. H. Wehrung)

EXHIBIT 2—Continued.

and collectable at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof, we promise and agree *ti* pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable, for Attorney's fees to be allowed in said suit or action.

ROWE & MARTIN (portion
torn off here)

No.——— \$73.30

(Endorsed across front in pencil) PAID.

(Endorsements on back of note)

Nov.	15-09	Int.				\$41.75
March	1-1910	“				23.34
June	1-1910					20.00
W. H. Wehrung						
May	15-11	Rec.	Int	to	date	\$76.67
June	15-11	“	“	“	“	6.67
July	15-11	“	“	“	“	6.67
Aug.	15-11	“	“	“	“	6.67
Sept.	15-11	“	“	“	“	6.67
Oct.	15-11	Rec.	int.	to	date	\$6.67
Nov.	15-11	“	“	“	“	6.67
Dec.	15-11	“	“	“	“	6.67
Jan.	15-12	“	“	“	“	6.67
Feby.	15-12	“	“	“	“	6.67

(Testimony of *W. H. Wehrung*)

EXHIBIT 2—Continued.

June	8-12	Rec.	Int to Mar.	15-12	6.67
July	30-12	“	“	“ April 15-12	6.67
Mar.	4-13	“	“		73.30
Mar.	4-13	“	Prin.		1000.00

TRUSTEE EXHIBIT 3.

\$1500.00 Portland, Oregon, Jan 1, 1909.

Six months after date, without grace, we promise to pay to the order of *W. H. Wehrung*, Portland, Oregon, Fifteen Hundred Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin at the rate of eight per cent. per annum from date until paid for value received. Interest to be paid at maturity, and if not so paid, the whole sum of both principal and interest to become immediately due and collectable, at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof, we promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable, for Attorney's fees to be allowed in said suit or action.

No.——

ROWE & MARTIN,

by (portion torn off)

Endorsed on face:

\$110.

PAID.

(Testimony of W. H. Wehrung)

EXHIBIT 3—Continued.

Endorsed on back:

W. H. Wehrung				
July	1st, 09	Paid int.		\$60.00
Nov.	15-09	Int.		45.00
March	1, 1910	Int.		35.00
June	1-1910			20.00
"	1-1910			10.00
May	15-11	Rec. interest to date		\$115.00
June	15-11	Rec. int. to date		\$10.00
Pay to the order of M. C. Wehrung				
July	15-11	Rec. int. to date		\$10.00
H. Wehrung				
Aug.	15-11	Rec. int. to date		10.00
Sept.	15-11	"	" " " "	10.00
Oct.	15-11	"	" " " "	10.00
Nov.	15-11	"	" " " "	10.00
Dec.	15-11	"	" " " "	10.00
Jan.	15-12	"	" " " "	10.00
Feb.	15-12	"	" " " "	10.00
June	8-12	"	" to Mar. 15-12	10.00
July	30-12	"	" " April 15-12	10.00
Mar	4-13	"	"	110.00
"	" " "	"	"	1500.00

(Testimony of *W. H. Wehrung*)

TRUSTEE EXHIBIT 4.

\$1700.00 Portland, Oregon, Jany. 15, 1913.

Ninety days after date, without grace, we promise to pay to the order of The Hillsboro National Bank, Hillsboro, Oregon, Seventeen Hundred Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin at the rate of 8 per cent. per annum from _____until paid, for value received. Interest to be paid at Hillsboro, Oreg., and if not so paid, the whole sum of both principal and interest to become immediately due and collectable, at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof,—— promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable, for Attorney's fees to be allowed in said suit or action.

ROWE -----(Portion torn off.)

No. 1494. April 15-13.

Endorsed on face:

\$18.50 PAID.

Mar.	4-13	Recd. Int.	\$18.50
Mar.	4-13	“ Prin.	1700.00

(Testimony of Alex Sweek)

ALEX SWECK

A witness called on behalf of the Trustee, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. NELSON:

Mr. Sweek, you are an attorney?

A. I am, yes, sir.

Q. In this state. And you act as attorney for Mr. H. J. Martin, the bankrupt? A. Yes, sir.

Q. Before his bankruptcy and subsequently?

A. Yes, sir.

Q. It has been testified to by Mr. Wehrung that at the time of the payment of the sum of \$5875.00, derived from the sale of real estate, certain notes which he held signed by Mr. Martin, and one of which I think he said was endorsed by you, were cancelled by him, handed to Mr. Martin, and by Mr. Martin to you. A. Yes, sir.

Q. In whose possession have those notes been since that time?

A. They have been in my possession.

Q. And where are they now?

A. Well, I thought they were all in this envelope when I brought them up this morning. There may be another one in the safe.

Q. When did you put them in that envelope?

A. Well, I put them in the envelope soon after they were given to me; not at the time, but soon afterwards.

(Testimony of H. J. Martin)

Q. Were all of them together when you put them in the envelope?

A. Well, I thought so. I wouldn't be sure. I may find another one there.

Q. Do you know what the amount of the missing note is, approximately?

A. No, I do not know.

Q. Have you any means of ascertaining that? Any data from which you could ascertain the amount of that note?

A. I would have no data of any kind whatever unless I should find the cancelled note in my office.

Witness excused.

H. J. MARTIN,

a witness called on behalf of the trustee, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. NELSON:

Mr. Martin, you are the H. J. Martin referred to as the bankrupt in this matter? A. Yes, sir.

Q. And do you recall the incident in connection with the cancellation of these notes?

A. Why, I don't know that I can. The business was done there in the office.

Q. By whom? A. Mr. Sweek.

Q. Mr. Sweek attended to it for you?

A. Yes, sir.

Q. And did you look at the notes at the time?

(Testimony of H. J. Martin)

A. Not then, no.

Q. Well, do you know how much you owed Mr. Wehrung, or what notes he held?

A. I think that the amount was on our books; Just the amount I couldn't tell you.

Q. Are you sure your books show this transaction, Mr. Martin?

A. Well, you mean this transaction, the last?

Q. The payment of these notes, yes.

A. I don't know that it did.

Q. You don't recall that?

A. No, I don't recall.

Q. Are you sure that your books will show the amount of the note?

A. Which note do you mean?

Q. The missing.

COURT: The notes to Wehrung.

Q. That you owed Wehrung.

A. I think on our journal book or ledger book, I think our bookkeeper kept a list of what we owed.

Q. Do you know what you owed him?

A. No, I do not. I don't remember the exact amount.

Q. Did you examine the notes at the time they were cancelled? A. Yes, I think so.

Q. But you don't recall the amounts of the notes?

A. No, I do not.

Q. You don't know whether Mr. Wehrung is right in his supposition that it was \$1000.00 principal or not?

(Testimony of H. J. Martin)

A. I couldn't tell you, I am sure.

Q. Who handled that transaction for you?

A. Mr. Sweek.

Q. Was anything said at the time about the legality of the transaction, whether you had a right to do that?

A. Mr. Sweek said I had a right to ask—to sell the land to pay off what I wanted.

Q. Did Mr. Wehrung hear that advise?

A. I don't think Mr. Wehrung was there.

Q. You don't think he was there. A. No.

Q. What dealings did you have with the purchaser?

A. Why, I don't know as I had any more than to make out the deed.

Q. Did you make out the deed?

A. I think Mr. Sweek made it out for me.

Q. And Mr. Sweek or Mr. Wehrung attended to the sale entirely, did they not? A. Yes, sir.

Q. At the hearing before the Referee in Bankruptcy, you didn't even know the name of the purchaser of the property?

A. No, sir no. That is to my best recollection, I did not.

Q. Now, Mr. Martin, at that time there had been several suits against you, and attachments. Isn't that a fact?

A. I had this—if you mean this damage suit.

Q. No, I am not talking about the damage suit.

(Testimony of H. J. Martin)

A. Yes, I believe your firm brought a suit against me.

Q. Weren't there a good many other suits?

Mr. MANNING: What time do you mean, Mr. Nelson?

Mr. NELSON: At the time of this sale.

Mr. MANNING: The 4th of March.

Mr. NELSON: Along the first week in March.

A. I couldn't say whether the suit you brought was brought at the time the sale was made or before—must have been before or afterwards. I don't know which. I don't remember.

Q. You know that other suits were brought too, and attachments, were there not?

A. Yes, was one brought, a disputed account, a balance due for wiring the store which we shouldn't have paid at all; the building should have paid it but we paid it—just simply paid it rather than have the trouble and fuss, that is all.

Q. At that time you were behind in the payment of rent, were you not?

A. At the time the suit was brought?

Q. No, the 1st of March, 5th of March.

A. I don't remember.

Q. You owed a great many clerks, etc., back wages?

A. Well, I don't remember as to that, I am sure. Mr. Lomax paid the help; we might have owed them two or three days back. The payments might have been due on the 1st and paid on the 5th.

(Testimony of H. J. Martin)

Q. Your mercantile indebtedness and postal card indebtedness was practically all past due, was it not?

A. I think most of it was.

Q. Practically all past due?

A. Yes, I think it was.

Q. Notes to the United States National Bank and others were due? A. Yes.

Q. Past due?

A. Yes, I think the one to the U. S. National Bank was on demand.

Q. Demand note? A. Yes.

Q. And you had no cash on hand? A. No.

CROSS EXAMINATION.

Questions by Mr. MANNING:

You would know, however, would you not, Mr. Martin, if you had overpaid Mr. Wehrung at the time?

A. Why, I have every reason to believe that I would, yes.

Q. There was an attachment suit, so you testified, which was a disputed account, brought by Beach, Simon & Nelson? A. No, No.

Q. Well, there was a suit brought by Beach, Simon & Nelson, against you, was there?

A. Yes, sir.

Q. What became of it? A. I paid it.

Q. And this suit you testified to, that was a disputed account? A. Yes.

Q. What became of that?

(Testimony of George M. Healy)

A. Oh, I paid that too. That was for a small balance of \$25.00, I think; something like that. I asked my attorney at the time if it wasn't the best thing to pay it, rather than have any notoriety, any fuss, or anything about it.

REDIRECT EXAMINATION.

Q. Mr. Martin, isn't it a fact that the suit you are talking about our firm having brought was brought some months before this time?

A. Well, I don't remember as to the time it was brought. I know it was brought through your office.

Witness excused.

GEORGE M. HEALY

Recalled by defense.

CROSS EXAMINATION.

Questions by Mr. MANNING:

I will ask you to take this instrument and state to the court what it is, and for what purpose you obtained it.

A. Well, this is a paper that was handed into the office of Mr. Clarke, I believe by Mr. Murphy, at the time he was trying to collect the claim. I don't know who made that out.

Q. What is it? What does it purport to be?

A. Supposed to be a list of Mr. Martin's assets and liabilities.

Q. What does it show?

(Testimony of George M. Healy)

A. He is claiming a net worth of \$14,000; \$14,805.00.

COURT: What is the date?

A. The first of February, 1913.

Q. Now, you see some pencil marks on that there; do you know who put them on?

A. I wrote those on.

Q. What did you write them on for? What is it?

A. Was analyzing the statement and wrote it there. He owes 80% of the assets; he is practically insolvent.

Q. He owed at that time, you say, nearly 80% of his assets? A. Yes.

Q. Still you swore here a little while ago—in other words you show there on that statement in your own handwriting, that he was owing nearly 80% of his assets, and you testify you sold for \$18,000 the drugstore—the stock of drugs.

Mr. NELSON: Oh, no he didn't.

COURT: He swore to \$11,000.

Mr. MANNING: Eleven thousand, and eight thousand, postal cards.

A. That was the appraisalment.

Q. Oh, the appraisalment was \$11,000.00?

A. \$11,000.00.

Q. That is the appraisalment of the drugstore, and the appraisalment of the postal card company was what? A. \$7595.00.

Q. That is right, and you sold the stock of drugs?

A. Yes.

Q. And you testified you got \$18,000 for it?

(Testimony of George M. Healy)

A. No, sir.

Q. \$8,000 for the postal cards?

A. No, I didn't - - -

Q. Well, I am mixed up on that. Straighten it out.

COURT: He said he got \$2900.00 for the postal cards. I didn't get the statement for the drugs but the entire amount received was \$11,779.00.

A. That is correct. I don't know whose writing this is in this statement but it was in the office of the Clarke-Woodward Drug Company's files.

Witness excused.

TRUSTEE RESTS.

Mr. MANNING: If the court please, I desire at this time to ask for a non-suit. I don't see where Mr. Wehrung has been connected with knowledge.

COURT: This is an equity case. I don't know about a non-suit. Do you want to submit it on the record as it stands?

Mr. MANNING: I would like to have until two o'clock.

COURT: Very well.

Mr. MANNING: Just a moment. Maybe we can expedite the matter. If Mr. Nelson has no objection, I will put in this statement, which is the statement made by Mr. Martin to Mr. Wehrung.

(Testimony of W. H. Wehrung)

Mr. NELSON: Well, I will have to cross examine him on this statement. I couldn't very well let that go in without an examination of Mr. Wehrung as to what he thought of the figures.

Mr. MANNING: Well, we can put Mr. Wehrung back now, for that matter. This statement also, I would like to put in.

Mr. NELSON: I object to that statement going in. There has been no testimony as to who made those figures or anything else.

Mr. MANNING: Well, we wont put in evidence just now.

Statement marked "Defendant's Exhibit A for identification."

W. H. WEHRUNG

Recalled for defense.

DIRECT EXAMINATION.

Questions by Mr. MANNING:

Mr. Wehrung, you may take that instrument you have in your hand, and examine it and state what it is.

A. This is a financial statement made to me February 1st, of date February 1st, 1913, and was handed to me close to that date.

Q. By whom?

A. If I remember rightly by Mr. Martin, Mr. H. J. Martin.

(Testimony of W. H. Wehrung)

Q. What does it purport to show as to assets?

A. It shows the amount of the account of Rowe & Martin and the Portland Post Card Company, as well as the stock of goods as per inventory, and shows the indebtedness; also shows the net balance or surplus.

Q. Yes. A. The surplus shown here amounts to \$6169.85.

Q. And was this land that was sold to Mr. Douty included in that? A. No, sir, not included in here.

Q. Was there any property owned by Mr. Martin included in that outside the drug stock?

A. Nothing but the drugstore and the Portland Post Card Company's inventory of goods and accounts; they are both here. No realty whatever.

Q. Was there any account in addition to what was shown there on that paper mentioned to you by Mr. Martin, and which he claimed had been fully satisfied?

A. Mr. Martin claimed to me that the claim at the United States National Bank had been taken care of.

Q. How much did that amount to?

A. I don't remember the amount. Either seven or nine thousand dollars runs in my mind.

Mr. MANNING: I desire to put this statement in evidence.

(Testimony of W. H. Wehrung)

Marked: Defense EXHIBIT B.

(P. C. Co

JOINT STATEMENT & R. & M.)

Feby. 1, 1913.

Acct Rec. R & M.	5444.76		9971.32
P. C. Co	4526.56		
Mdse. (Inventory)	15785.19	R. & M.	40281.80
	24496.61	P. C. Co.	
F. & F.	6064.50	R & M	7101.10
	1036.60	P. C. Co	
Accts. Payable	7853.00	R. & M	17516.96
	5698.26	P C.Co (old)	
	3965.70	P. C. Co	
Bills Payable			
To Banks	6474.00)		33667.43
) S & M		
Others	11052.89)		
Banks	8222.32		
		P. PC. Co.	
Others	7918.22		
Surplus			6169.83
			<hr/>
			57354.22 57354.22

CROSS EXAMINATION.

Questions by Mr. NELSON:

Mr. Wehrung, did I understand you to say that the indebtedness of the United States National Bank was not included in here?

A. I understand it is included in there but is taken care of. That is my understanding.

(Testimony of W. H. Wehrung)

Q. And did you understand these bills payable included the indebtedness to yourself and every one else?

A. Yes, sir, I understood so.

Q. And that the accounts—all he owed on accounts was seventeen thousand dollars?

A. That is my understanding.

Q. Did you make any investigation after getting this statement?

Mr. MANNING: Objected to as immaterial and irrelevant. He could rely on this statement if he wanted to.

COURT: That is correct.

A. I made an investigation of course as far as could be made. I didn't go and take stocks.

Q. What investigation did you make?

A. That is where I got my information, by talking with Mr. Martin.

Q. That is what you meant by investigation, talking with Mr. Martin? A. Yes, sir.

Q. You were in his place of business frequently?

A. Quite often.

Q. In the postal card place?

A. Not so often. Very seldom.

Q. Did you have a general knowledge of his stock in these two places?

A. No, I can't say I have a general knowledge of that line of business.

Q. Did you know anything about the condition

(Testimony of W. H. Wehrung)

of this postal card business, with reference to any of that stock?

A. No, I didn't know anything about it.

Q. Did you understand this inventory price—the original cost price? A. That was my understanding, cost prices inventory price.

Q. Do you know anything about the enormous shrinkage of stock of that character?

A. No, sir, I do not.

Q. Did you ask whether allowance had been made for depreciation on any of this?

A. I did. My understanding was that some of the stock that was perishable would be nothing.

Q. What amount, do you know?

A. No, I couldn't recall that. I asked the question, for in my experience in business where we always take stock, there is a certain amount of stock valueless, at least we count as valueless and set aside. My understanding was that was the course they pursued.

Q. Was it also your understanding derived from your business experience that stocks of this character, several years old, as has been testified to, are figured at original cost?

A. Yes, sir. The goods are figured at actual cost. Of course if you have perishable stuff, of course, as I said before, that is set aside and of no value.

Q. Postal cards, for instance, five years old?

A. I just explained I knew nothing of the value postal cards.

(Testimony of W. H. Wehrung)

Q. You knew nothing of the value of this business?

A. My experience in business has been along the general merchandise line, and I suppose that there the same rule would apply.

Q. As I understand it then, as a banker in lending money you consider the inventory or original cost of the merchandise would be a fair valuation to put on it.

A. I don't see any other way to get at it. That is the way we figure all the time.

Q. You figure out value at the original cost?

A. At cost.

Q. In determining credit?

A. Most concerns figure cost with more added, and if they took their discount, then they took their discount off.

Q. Make no allowance for any depreciation?

A. As I said before all stock that is depreciated is set aside as of no value, and if the merchant gets anything out of it, he is just that much ahead. That is the way we figure.

Q. The furnisture and fixture account is a little over seven thousand dollars. Did you see the fixtures he had? A. I did.

Q. Did you judge them to be worth \$7,000?

A. I judge so.

Q. Do you know they were bought on the installment plan?

A. I don't.

(Testimony of W. H. Wehrung)

Q. With reservation of title? A. I don't.

Q. Don't you know, as a business man, that fixtures like that wouldn't bring \$300.00 if he owned them?

A. No, I don't know, that. We figure fixtures worth what they cost with a certain per cent of depreciation; that you are adding to every few months, two months, six months—to your fixtures; putting in something or adding to, so a merchant has a right to consider his fixtures at cost value always in making an estimate on his worth.

Q. I am talking about a banker who is lending money. Does a banker who is lending money figure them as an asset dollar for dollar at the original cost?

A. Certainly he takes that into consideration. He is not lending dollar for dollar. He is not going to work and lending any man who has \$7000.00 in fixtures—he is not going to loan him \$7000.00 on it.

Q. You are used to seeing statements and used to judging them? A. Yes, sir.

Q. You saw the account of fixtures; you noted the original cost, \$7100.00? A. Yes.

Q. I will ask you whether or not it is a fact, as a banker you didn't know at that time and don't know now, as a matter of fact, even if he had title to those fixtures, assuming he had—as a matter of fact for liquidation purposes, for sale purposes, they wouldn't bring twenty cents on the dollar.

A. Liquidation purposes and doing business are two different things. If going to do business, it is

(Testimony of W. H. Wehrung)

necessary to have those fixtures; you can't replace those fixtures without money; you have got them in and probably advanced the price on account of taking off and adding every month or two to the fixtures, and have to figure the original amounts.

Q. I am not talking about record values, or anything of that kind, I am talking about from - - -

A. I am trying to answer the question and say the fixtures are worth dollar for dollar what they cost; can't do business without them.

Q. I want you to answer my question - - -

A. I am trying to answer.

Q. You are answering from the standpoint of Mr. Martin instead of Mr. Wehrung.

A. I don't think so.

Q. He made the actual statement to you.

A. All right.

Q. It may be from the testimony you have given that there is justice in your statement that a merchant in figuring his worth should put in the fixtures at what they originally cost him, but I am asking you as a banker, and the man who received the statement, you must look at it from the standpoint of what that stuff is worth, don't you?

A. Certainly I do.

Q. Not what it cost this man. You don't have an idea for a moment that \$7100 worth of fixtures—originally cost him that—in a position like that would be worth \$7100, do you?

A. I certainly did, to do business with.

(Testimony of W. H. Wehrung)

Q. You did?

A. Yes, sir, to do business with.

Q. Have you ever had experience in that line? Know something about it?

A. I have been in it about 25 years.

Q. Would any stock of fixtures bring anything like what they cost?

A. You don't seem—I don't seem to grasp you or you don't me. Here is the point exactly. If you are doing business, you have to do it with money and fixtures, don't you?

Q. Yes.

A. Now, any company liquidating that business, your fixtures are worth less than any part of your business of course, if you are going to liquidate, but a live business, your fixtures are worth par. That is the only way I know to explain the case.

Q. That is so from the standpoint of the man doing business.

A. Certainly.

Q. But now, loaning money to a man — — —

COURT: He didn't loan money on this statement. This statement is only important as to whether he had reason to believe this man was bankrupt at the time the statement was received.

COURT: Now, then you get that kind of a statement from a going concern, and nothing else, and no other knowledge of his business, then the question is whether a man wouldn't assume that Martin was bankrupt.

(Testimony of W. H. Wehrung)

Q. Yes, that is what I am asking. Here is a bank, and seeing that statement with fixtures \$7100.00, whether he would say that was an asset of \$7100.

COURT: Whether he would think the firm was bankrupt or not, insolvent. If a man knew nothing at all of another's business and got that kind of a statement, showing a balance of seven or eight thousand dollars, and it was a going concern and doing business, without any information or indication that it was insolvent or unable to pay its debts, he would naturally suppose it was a solvent concern, wouldn't he?

Mr. MANNING: That may be the fact, the bank will, but this man in the first place is not in the position of relying on a thing of this kind; this man was in business himself; saw these frequently; saw them frequently; was in touch with the business, as he says, and could make some estimate of it.

Q. Now, with reference to these accounts receivable, ninety-nine hundred and some dollars, did you know anything about any of these accounts?

A. Only in a general way.

Q. What did you know about them?

A. Well, all I knew was this, that we figure with a live business, the accounts are worth ninety-cents on the dollar, in a live business, and a man who looks after his business can collect—he can safely figure on collecting ninety cents on the dollar. Liquidation is a different proposition. You understand when a man liquidates his business, a great many men dispute their accounts, but as long as the business is

(Testimony of W. H. Wehrung)

alive that man will pay his account. Why? Because he wants more credit. That is my experience for 25 years.

Q. Did you inquire how old these accounts were, any of them?

A. No, I did not.

Q. Simply accepted these figures?

A. Certainly.

Q. And figured them worth 90 cents on the dollar?

A. Certainly that is what I figured.

Q. How about the merchandise inventory value, forty thousand dollars?

A. My understanding is it was taken at cost price.

Q. And what did you figure that worth?

A. Figured worth face.

Q. Face value?

A. Yes, sir.

Q. You made no allowance of 10% or any other percentage, did you?

A. No, sir, if this is figured at cost price and perishable stuff not taken, it is worth that.

Q. Why do you differentiate between stock and fixtures and accounts? Why do you make an allowance on accounts and no allowance on stock and fixtures. Don't they shrink as much?

Q. Is there any reason for it? I would like to know what you thought of it.

A. That is the way I figured all my life in business.

A. My experience is that in a live business you

(Testimony of W. H. Wehrung)

will not lose over 10% on the accounts if a man handles it right; while he is in business he can collect his accounts so he can retire and not lose many.

Q. Is it your experience also he would do the same with fixtures—get out on 100 cents?

A. I don't know that he can get out with a hundred cents unless he sells to some one who succeeds him in business. Then could probably get a hundred cents on the dollar and probably a premium.

Q. Now, to go back, I will ask why you made a depreciation on accounts and not on fixtures.

A. I can't explain it plainer.

Mr MANNING: It seems to me Mr. Wehrung misunderstands.

COURT: I understand he made a ten per cent allowance because his experience in business lead him to believe there would probably be a loss in collecting the accounts.

A. That is exactly it.

COURT: And he made none on the inventory price of goods because he supposed they would be sold over the counter.

Q. And how about fixtures—did you suppose they would be sold over the counter?

A. Now, if this business is going to be bought by somebody else and continued, those fixtures are worth what they cost, and probably more. A man would give cost readily before he would have those torn out and put in others.

Q. Did you ever hear of a concern in your busi-

(Testimony of W. H. Wehrung)

ness experience which sold its fixtures for more than it paid for them?

A. Well, I sold fixtures for more than they cost me, yes.

Q. Didn't you sell the good-will of your business?

A. No, I don't figure you can sell the good-will of your business.

Q. You sold fixtures and such for more than they cost?

A. I sold fixtures for a lump sum of money, more than they cost.

Q. What sale was that—Hillsboro?

A. Yes.

Q. What was the amount?

A. Well, I can't just recall the amount.

Q. Now, the accounts and bills payable figure up to \$50,000. Did you investigate them at all?

A. Only as far as the statement goes and the talk I had with Mr. Martin.

Q. Did you know they were all past due, or practically all, as Mr. Martin testified?

A. No, I didn't understand it so.

Q. Did you know they were past due?

A. I understand the seven or nine thousand—whatever the amount was—to the United States National Bank was taken care of, and I understood that some of these claims, they had six, nine and twelve months; also understood he was paying cash for all goods he bought for the drugstore.

(Testimony of W. H. Wehrung)

Q. You knew he had asked and gotten an extension of a good many accounts, didn't you?

A. I said when I was on the stand before, I understood he had gotten an extension of some eastern accounts, the Portland Post Card Company.

Q. Do you know whether paid?

A. No, I couldn't say.

Q. You agreed to postpone the payment to yourself until paid, before getting your money. You didn't make any investigation of that question?

A. No, no; my understanding was I was to wait a year; that was my understanding.

Q. Your testimony as given before isn't accurate then? A. Yes.

Q. Your recollection now is different from what it was at that time?

A. My understanding was for twelve months. That is my understanding; extension made to the Portland Post Card Company for twelve months.

Q. Didn't you say before the general nature of your agreement was you were to postpone the collection of your account until the payment of these other accounts?

A. That is, they were to be paid in twelve months.

Q. Now, you say at the time - - -

A. Well, that is - - -

Q. (Interrupting) I just want to know what you say about it in your testimony. Did you inquire as to whether these accounts have been paid?

A. No, I haven't.

(Testimony of W. H. Wehrung)

Q. Never made any inquiry as to them?

A. I considered them solvent all the time.

Q. Now, here is a statement, Mr. Wehrung. You believed that the indebtedness was only \$50,000.00 as I understand.

A. I believed just as it was on that statement.

Q. You know that their schedule filed showed \$69,000?

A. I don't know that, only what I have heard here today.

Q. You had no previous information about that?

A. No, sir. None whatever.

Q. Did you know about owing back rent at that time? A. No, I didn't.

Q. Did you ask whether any preferred liability, such as wages, etc., to a number of employees?

A. No, sir, I did not.

Q. Did you know whether he had paid his taxes which were due and which were a preferred claim?

A. No, sir, I didn't ask that.

Q. Did you consider this a full and complete statement?

A. I certainly did. I called attention to the fact, of course, that his home wasn't in there, and the land wasn't in there, and he said, no, they weren't in there; they are all added to this; then he told me about the United States National Bank note being taken care of.

Q. Did he tell you that was not in there?

A. He said—it was my understanding it was. My understanding was everything was in.

(Testimony of W. H. Wehrung)

Q. What did you mean by being taken care of?

A. Well, I don't know.

Q. By an extension?

A. No, he said had been taken care of.

Q. You didn't consider this a full and complete statement?

A. All except his home and the real estate.

Q. You knew certain assets were omitted; didn't that make you believe some liabilities were also omitted?

A. No, I asked about it, and he said that covered all.

Q. You didn't check the statement at all further than this conversation with him?

A. That is all. I didn't go in and check his books over of course.

Q. Now, I will ask you this; Here is a statement showing Accounts Receivable \$9900; Merchandise \$40,000; Furniture & Fixtures \$7000, aggregating \$57,000. A. Yes, sir.

Q. And absolute obligations of \$51,000. What did that statement indicate to you at that time?

A. It indicates there is a balance of something over \$6000. Then he had land and a home amounting to about \$15,000 or \$16,000; amounting to about \$21,000.

Q. \$15,000 or \$16,000; how did you get those figures?

A. Take \$6,000 for the land at Beaverton, and probably \$10,000 for his home. Worth that isn't it?

(Testimony of W. H. Wehrung)

Q. Is it? A. I should judge so.

Q. Sell at about \$2600.00? A. Say \$5,000.00.

Q. You knew that was exempt, didn't you?

A. I understand \$1500 exempt.

Mr. MANNING: That is exempt, and it isn't. Might not be exempt, Mr. Nelson.

Mr. NELSON: Judge Bean has just held it is.

A. Understand I am not a lawyer, but I understand Judge McBride made a decision in the Circuit Court at Salem, and allowed a man to put up \$1500.00 and take the property. I don't know whether anything wrong in that. He put up \$1500.00 and took the property.

COURT: Could do that under some circumstances.

A. That is all the knowledge I have.

Q. Now, Mr. Wehrung, did that indicate to you this man was solvent or insolvent?

A. Yes, solvent.

Q. That indicated to you solvency?

A. Yes, sir. I believe now if it had been handled right, there would have been nothing to it.

Q. In spite of the fact that under the testimony it is shown that only ten per cent could be realized for the creditors?

A. Yes. I will bring an example, a business man in Hillsboro—if I am allowed to do this—a business man in Hillsboro with a stock that inventoried \$1100.00 more than the indebtedness at cost price, clean stock. All of the dead stock was set aside, nothing. They sued this fellow and he got scared

(Testimony of W. H. Wehrung)

and went into voluntary bankruptcy. I went to Mr. Sabin and said "Let's have some one handle this; this man is not a bankrupt; we can help him out and save something. They jumped in and scared him to death and he went into voluntary bankruptcy. I had a claim of \$800.00. The inventory showed, as I tell you, that the stock was, in round numbers, \$1100 more than the indebtedness, not counting any dead stocks, and we got sixty-one cents on the dollar.

Q. That is more than ten cents, isn't it?

A. It shows a man can be solvent and still can't pay out.

Q. Did that experience occur before you got this statement? A. How is that?

Q. When was this experience?

A. About a year ago; a year-and-a-half ago.

Q. Well, you have had a similar experience before you got this statement.

A. I have always—when I mix up in business, I always put up more money — — —

Mr. MANNING (Interrupting) I don't see the intent of this examination.

COURT: The value of this property at the time of this transaction is to be construed as a going concern.

A. That is the point I was trying to get, Judge. They liquidated that business and got 61 cents. When alive the stock was worth \$1100 more than the indebtedness; only an \$8000 business.

Q. Did you, at that time, consider this concern a solvent one? A. I did.

(Testimony of W. H. Wehrung)

Mr. MANNING: That is the third or fourth time he has answered that question.

COURT: He has answered it.

A. And I would have loaned him more money if he had asked me for it.

Q. You would have loaned?

A. If he had come - - -

Q. As a banker on that statement?

A. Myself, I am talking about.

Q. You would have loaned him money on that statement? A. Yes, sir.

Q. Are you a personal friend of his?

A. Not particularly a personal friend at all.

Q. You would loan money on that?

A. Yes, sir.

Q. At 8%? A. Yes, sir.

Q. You can loan money on mortgages in Washington County at 8%? A. We can.

Q. You do? A. We don't loan on mortgages.

Q. You can? A. Yes, easy enough to lend.

Q. You would have loaned him money?

A. I have that much faith in him. Would have loaned him money.

Q. With that statement?

A. With that statement.

Q. Without security?

A. Without security.

Q. You didn't loan him any more at the time, did you?

A. He didn't ask me for it.

(Testimony of W. H. Wehrung)

Q. Did you on the contrary ask him to pay up?

A. I did, certainly. I made every effort I could to collect my accounts from him as I do everybody else.

Q. It seems to me if you had been willing to lend him more at that time, you would have been glad to have it out at 8% at that time. Why did you ask him for the money?

A. Because I wanted it.

Q. Why did you tell Mr. Douty he was in a bad fix, had to have money—had to raise money. Did you understand my question?

A. I understand your question. I understand it. Put the question again.

Q. (Read.)

A. I explained before, as you remember, I was trying to make this deal, and I didn't explain very much to Mr. Douty, except I explained he had a suit and there was a judgment against him, and he would probably have to have some money. I was leading up to the deal.

Q. You didn't mean have money to pay the judgment with, did you?

A. I meant just what I said. I wanted to bring the impression on Mr. Douty that this land was a bargain; was trying to make the sale.

Q. When you told him Martin was in a bad shape financially it wasn't because you believed so, but you wanted to make the sale; is that so?

A. You misunderstand that. There never was

(Testimony of W. H. Wehrung)

anything said about Mr. Martin's financial condition at all. I merely made mention of this damage suit that had been brought against Mr. Martin.

Q. You heard Mr. Douty's testimony, didn't you? A. Yes.

Q. And his saying he was in bad shape?

A. He must have meant that, because we talked of nothing else.

Q. What was the idea—you were going to beat this judgment? A. How is that?

Q. What was the idea of your statement? What was the basis of your statement—the gist of it?

A. I wanted to make that sale of land.

Q. To avoid paying the judgment that was to be gotten? A. No.

Q. What connection did the judgment have with the property?

A. I am trying to explain I was trying to make the impression, so I could make the sale.

COURT: Puff the land?

A. Yes, exactly.

Q. Why did you use judgment? Why did you mention the judgment? What did that have to do with the sale?

A. Well, that is all I had to mention, as far as that is concerned.

Q. You told him a judgment was to be obtained against Martin?

A. A damage suit.

Q. A judgment in a damage suit? A. Yes.

(Testimony of W. H. Wehrung)

Q. That is why he wanted to get rid of that property, and could be in bad shape?

A. I told—that was my reason why I thought the land could be bought at a bargain.

Q. What was your reason for thinking so? What was your reason for making this sale?

A. My actual reason for making the sale was to pay myself.

Q. That was your reason at the time?

A. Certainly.

Q. It didn't strike you as unusual that a merchant in a line of business of this kind should sell his piece of property and pay the money in that way and let you handle the transaction? A. Why, no.

Q. You employed an attorney—you paid Mr. Bagley? A. Yes.

Q. You never asked Mr. Martin to pay any of these expenses?

A. No.

Q. You and Mr. Sweek handled the entire transaction, as Mr. Martin says?

A. No, I had no business with Mr. Sweek at all, except I handed the notes to Mr. Martin and he called Mr. Sweek.

Q. Didn't you meet Mr. Sweek.

A. Met in the room when Mr. Douty, Mr. Martin and myself talked.

Q. You didn't think at the time that in doing that you would get more than any other creditor? Any other percent?

(Testimony of W. H. Wehrung)

A. I wasn't figuring any other creditor.

Q. You weren't knowing anything about other creditors?

A. No, sir.

Q. You didn't know anything about this offer of 20 cents on the dollar? Where?

Q. At the meeting of the creditors?

A. No, sir.

Q. Requesting an extension?

A. Never knew anything about it.

Q. You had no idea, when Mr. Martin sold, you were going to get more than any other creditor?

A. No, sir.

Q. You thought he was perfectly solvent?

A. Certainly did.

Q. You knew you had asked for your money and had been calling for it?

A. I never made a demand for the money.

Q. You hadn't? A. No, never did.

Q. I understood you to say a while ago you had asked for the money?

A. When I came in to make collection is when I asked for the money; when this land business came up—I explained before in my evidence; you probably remember it—that the bank examiner had turned the loan—it was the National Bank Examiner, you know—had wanted us to confine the loans in our own territory; he said "We want you to liquidate this note and some others as soon as you can con-

(Testimony of W. H. Wehrung)

veniently, and we would like to have you confine your loans in your own territory.

Q. That referred to the bank notes; not your own or your mother's notes?

A. They were requiring the assets in the vault to be perfectly safe.

Q. Why did you press collection and devise this method?

A. If I saw an opportunity, Mr. Nelson, to collect this money and sell this land, wouldn't I do it?

Q. That would depend on whether you considered it a good 8% loan as you indicated.

A. I would have a perfect right to try to collect those claims.

Q. You didn't consider that an unusual method, at all, of getting money? A. No, sir.

Q. Nothing to arouse your suspicion or anything of that kind?

A. I wouldn't have spoken to Mr. Martin if it hadn't been for the examiner; it would have run along indefinitely.

Q. You spoke of the examiner. That was in in February, I understand? A. February.

Q. This transaction took place the 4th or 5th of March? A. Yes.

Q. And at that time there was nothing to make you think it peculiar at all that this property should be turned over to you, practically, as it was?

A. Why no. I didn't see anything peculiar about it.

(Testimony of W. H. Wehrung)

Q. That didn't strike you as peculiar at all?

A. No, sir.

Q. You knew he didn't have money to pay you, didn't you?

A. No, I didn't know that.

Q. You knew his statement didn't show any cash, didn't you?

A. I didn't know what his resources were, of course; what his ability was to raise money. We hadn't gone into that.

Q. You knew he had no cash, didn't you?

A. No, I didn't know that. I can't say now whether I knew he had cash or didn't have cash.

Q. The statement doesn't show any cash does it?

A. I don't know as to that. I would have to look to see what it does show.

COURT: The statement shows for itself.

Witness excused.

Adjourned until 2. p. m.

Thursday, June 11, 1914, 2 p. m.

Mr. NELSON: If the court please, Mr. Sweek has found that other note which will be admitted.

Marked Trustee's exhibit 5.

Mr. MANNING: If the court please, I don't think we have any other testimony. I want to ask your Honor if you understood that at the time this

particular transfer was made this drugstore was a going proposition, the drugstore was open, and went into the hands of a receiver. The transaction was on the 4th of March.

COURT: I understand the petition in bankruptcy was filed along the latter part of March.

Mr. NELSON: The 25th of March.

Mr. MANNING: And the Postal Card Company was still a going proposition at that time.

That is our case, and I don't care to argue it.

TRUSTEE EXHIBIT 5.

Portland, Oregon, April 23rd, 1909.

\$1000.00

Six months after date, without grace, we promise to pay to the order of W. H. Wehrung, Portland, Oregon, One thousand no-100 Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin, at the rate of eight per cent. per annum from date until paid, for value received. Interest to be paid at maturity, and if not so paid, the whole sum of both principal and interest to become immediately due and collectable, at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof, we promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional

sum, in like Gold Coin, as the Court may adjudge reasonable for Attorney's fees to be allowed in said suit or action.

No. _____ ROWE & MARTIN (torn off)

Endorsed on face:

\$73.30

PAID.

Endorsed on back.

		Nov. 15-09	Int.	\$44.85-100
March 1-1910	"			23.34
June 1-1910	"			20.00
Aug. 10-1910	on note int.			33.93
May 15-11	Rec. Interest to date			\$43.35
June 15-11	" " " "			6.67
July 15-11	" " " "			6.67
Aug. 15-11	" " " "			6.67
Sept. 15-11	" " " "			6.67
Oct. 15-11	Rec. Interest to date			\$6.67
Nov. 15-11	" " " "			6.67
Dec. 15-11	" " " "			6.67
Jan. 15-12	" " " "			6.67
Feb. 15-12	" " " "			6.67
June 8-12	" " to Mar. 15-12			6.67
July 30-12	" " " April 15-12			6.67
Mar. 4-13	" "			73.30
" 4-13	" Prin.			1000.00

Filed December 28, 1914. G. H. Marsh, Clerk.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record on appeal in the case in which George M. Healy, Trustee in Bankruptcy, of the Estate and Effects of H. J. Martin is appellant and W. H. Wehrung is appellee, in accordance with the law and the rules of this Court, and in accordance with the praecipe of the appellant filed in said case and that the said record is a full, true and correct transcript of the record and proceedings had in said Court, in accordance with said praecipe, as the same appear of record and on file at my office and in my custody;

And I further certify that the cost of the foregoing record is \$, for Clerk's fees for preparing the transcript of record and \$ for printing said record, and that the same has been paid by said appellant.

In testimony whereof I hereunto set my hand and affix the seal of said Court, at Portland, in said District, on the 1915.

Clerk.